

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

DATACELL EHF.,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 1:14-cv-1658-GBL-TCB
)	
VISA INC., VISA EUROPE LTD., and)	
MASTERCARD INCORPORATED,)	
)	
Defendants.)	

DEFENDANT VISA INC.'S REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF ITS MOTION TO DISMISS

Pursuant to Federal Rule of Evidence 201, Defendant Visa Inc. requests that this Court take judicial notice of the following material, in support of Visa's motion to dismiss, without converting that motion into a motion for summary judgment:

EXHIBIT 1	Scott Shane & Andrew W. Lehren, <i>Leaked Cables Offer Raw Look at U.S. Diplomacy</i> , N.Y. Times, Nov. 28, 2010
EXHIBIT 2	Press Release, The White House, Statement of National Security Advisor General James Jones on WikiLeaks (July 25, 2010), <i>available at</i> https://www.whitehouse.gov/the-press-office/statement-national-security-advisor-general-james-jones-wikileaks
EXHIBIT 3	Press Release, The White House, Statement by the Press Secretary (Nov. 28, 2010), <i>available at</i> https://www.whitehouse.gov/the-press-office/2010/11/28/statement-press-secretary
EXHIBIT 4	Julie Tate, <i>Bradley Manning Sentenced to 35 Years in WikiLeaks Case</i> , Wash. Post, Aug. 21, 2013
EXHIBIT 5	Miguel Helft, <i>Why Apple Removed A Wikileaks App From Its Store</i> , N.Y. Times, Dec. 21, 2010
EXHIBIT 6	Visa Inc. Core Rules and Visa Product and Service Rules, <i>available at</i> http://usa.visa.com/download/about_visa/15-April-2015-Visa-Rules-Public.pdf (excerpts)

EXHIBIT 7	Visa Inc., Annual Report (Form 10-K) (Nov. 20, 2014) (excerpts)
-----------	---

On a Rule 12(b)(6) motion, courts are permitted to look outside the allegations of a complaint, without converting it into a motion for summary judgment, and they “may properly take judicial notice of matters of public record” or other judicially noticeable material. *Philips v. Pitt Cnty. Mem’l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). Visa Inc. submits the above-listed exhibits because they provide background facts that should be considered but are avoided in the Complaint. All of the above-listed exhibits are matters of public record and/or judicially noticeable.

Exhibits 2 and 3 are official statements of government officials that are a matter of public record.

The Court may consider newspaper articles that contain widely known facts that are not seriously disputed or in question. *See Bailey v. Black Entm’t Television*, Civil Action No. 3:09CV787, 2010 WL 1780403, at *3 (E.D. Va. May 3, 2010) (taking judicial notice of contents of newspaper article in deciding motion to dismiss), *aff’d*, 393 F. App’x 971 (4th Cir. 2010). Exhibits 1, 4, and 5 are articles from newspapers globally recognized for reliable journalism, and the facts contained therein have been heavily documented and are some of the most high-profile news stories in recent years. Moreover, the purpose for the Court’s consideration is not the truth of the underlying facts, but demonstrating the controversy surrounding WikiLeaks.

The Court may consider “information publicly announced on a party’s web site, so long as the web site’s authenticity is not in dispute and ‘it is capable of accurate and ready determination.’” *Jeandron v. Bd. of Regents of Univ. Sys. of Md.*, 510 F. App’x 223, 227 (4th Cir. 2013) (quoting Fed. R. Evid. 201(b)). Exhibit 6 is information posted by Visa Inc. about its policies and procedures, of which this Court may take judicial notice. *Id.* (taking judicial notice of university policies posted on its website in reviewing motion to dismiss). Exhibit 7 is Visa

Inc.'s publicly filed Form 10-K, which is available on the website of the Securities and Exchange Commission.

Although judicial notice of these materials is not necessary to resolve the motion to dismiss in Visa Inc.'s favor, Visa Inc. believes that these items provide helpful background to the Complaint and respectfully requests that the Court take judicial notice of these limited items.

Dated: May 8, 2015

Respectfully submitted,

/s/Jacob S. Siler

Jacob S. Siler (Va. Bar No. 80934)
Andrew S. Tulumello (*pro hac vice* pending)
Robert Gonzalez (*pro hac vice* pending)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
tel: 202-955-8500
fax: 202-467-0539
JSiler@gibsondunn.com
ATulumello@gibsondunn.com
RGonzalez2@gibsondunn.com

Counsel for Defendant Visa Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 8th day of May, 2015, I have electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the following counsel of record:

Philip J. Harvey (Va. Bar. No. 37941)
Jesse R. Binnall (Va. Bar. No. 79292)
Louise T. Gitcheva (Va. Bar. No. 86200)
HARVEY & BINNALL, PLLC
717 King Street, Suite 300
Alexandria, Virginia 22314
Tel: (703) 888-1943
Fax: (703) 888-1930
pharvey@harveybinnall.com
jbinnall@harveybinnall.com
lgitcheva@harveybinnall.com

Counsel for DataCell ehf

Stephen E. Noona (Va. Bar. No. 25367)
Mark E. Warmbier (Va. Bar No. 77993)
Kaufman & Canoles, P.C.
150 West Main Street, Suite 2100
Norfolk, VA 23510
Telephone: (757) 624-3000
Facsimile: (757) 624-3169
senonna@kaufcan.com
mewarmbier@kaufcan.com

*Counsel for Defendant MasterCard
Incorporated*

Pursuant to the Division-Specific Electronic Case Filing Policies and Procedures, two courtesy copies of the foregoing pleading will be delivered to Chambers within one business day of the electronic filing.

/s/Jacob S. Siler
Jacob Siler (Va. Bar No. 80934)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
tel: 202-955-8500
fax: 202-467-0539
JSiler@gibsondunn.com

Counsel for Defendant Visa Inc.